

The Honorable Robert J. Bryan

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UGOCHUKWU GOODLUCK NWAUZOR,  
FERNANDO AGUIRRE-URBINA,  
individually and on behalf of all those  
similarly situated,

Case No. 3:17-cv-05769-RJB

Plaintiffs/Counter-Defendants,  
v.  
THE GEO GROUP, INC.,  
Defendant/Counter-Claimant.

## STATE OF WASHINGTON,

Case No. 3:17-cv-05806-RJB

Plaintiff

**DEFENDANT THE GEO GROUP, INC.'S  
MOTION REQUESTING MODIFIED  
JUROR QUESTIONNAIRE TO BE SENT  
WITH JUROR SUMMONS**

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THE GEO GROUP, INC.

### Defendant

#### NOTE ON MOTION CALENDAR:

NOTE ON MOTION  
Date: October 8, 2021

DEFENDANT THE GEO GROUP, INC.'S MOTION  
REQUESTING MODIFIED JUROR QUESTIONNAIRE  
(3:17-CV-05769-RJB) (3:17-CV-05806-RJB)

AKERMAN LLP

1900 Sixteenth Street, Suite 950  
Denver, Colorado 80202  
Telephone: 303-260-7712

1 The GEO Group, Inc. (“GEO”), by and through undersigned counsel, pursuant to LCR  
2 47, moves this Court for a modified juror questionnaire. GEO provided Private Plaintiffs and the  
3 State (collectively “Plaintiffs”) with a revised proposal on September 2, 2021. Following  
4 conferral about editing the questionnaire and changing the timing of the delivery of the  
5 questionnaire, Plaintiffs did not provide any substantive objections to the revisions GEO  
6 proposes, Plaintiffs take the position that they “trust the Court’s expertise in issuing juror  
7 questionnaires and do not take a position regarding GEO’s suggested edits to the questionnaire or  
8 when the juror questionnaire should be distributed to jurors.” *Washington* Dkt. 547 at 29.  
9 Accordingly, GEO hereby provides the Court with its proposed edits to the questionnaire  
10 (attached as Exhibit A) and its support for the same.

11        Additionally, for the reasons set forth herein, which are serious enough to compel this  
12 Court to take additional steps to ensure that there is a fair trial in this case, GEO reiterates its  
13 request stated in the parties' joint pretrial order that the modified juror questionnaire be sent to  
14 the prospective jurors along with the juror summons.

## I. INTRODUCTION

16        The instant case is scheduled to be retried beginning on October 12, 2021. GEO moves  
17      this Court to add additional questions about whether jurors have been exposed to news  
18      specifically about the Northwest ICE Processing Center and whether potential jurors follow the  
19      above-case on various social media outlets in order to identify individuals who may be colored  
20      by the extensive media coverage in this action. Both during the pendency of the initial trial in  
21      June 2021, and since that time, this case has received negative press and other commentary  
22      surrounding the allegations, circumstances, evidence, and legal arguments made during the trial.  
23      Accordingly, GEO is justifiably concerned that this negative information could bias the jury  
24      pool. Taking such news and commentary into consideration, it is apparent that additional  
25      questions are necessary to identify any such biases and facilitate the selection of fair and  
26      impartial jurors.

1       The local news, social media, and local area abound with negative opinions regarding the  
 2 Northwest Detention Center (also known as the NWIPC), and specifically, the allegations made  
 3 against GEO and GEO's defense of same in the instant suit. During the pendency of this case,  
 4 and before the first trial, on May 28, 2019, Attorney General, Bob Ferguson, tweeted, "The GEO  
 5 Group, owner and operator of the NW Detention Center in Tacoma, WA, has made millions of  
 6 dollars exploiting the labor of immigrant detainees—paying workers \$1 per day, sometimes less  
 7 – in clear violation of Washington state's min. wage laws." A copy of the tweet is attached as  
 8 Exhibit B. Mr. Ferguson also linked an article from the Seattle Times entitled, "Pay immigration  
 9 detainees a fair wage. The for-profit exploitation of detained labor at the Northwest Detention  
 10 Center flouts Washington minimum-wage law. . . ." Exhibit B. After trial concluded, on June 17,  
 11 2021, Mr. Ferguson was quoted by U.S. News & World Report as saying, "GEO, a multi-billion-  
 12 dollar for-profit prison corporation that is publicly traded on the New York Stock Exchange,  
 13 pays workers \$1 a day or less to perform essential services necessary to maintain the Northwest  
 14 ICE Processing Center . . . . A hung jury allows us to re-try the claim again in front of a new  
 15 jury." A copy of the U.S. New & World Report article is attached as Exhibit C.

16       Starting in August 2019, and continuing to the present day, La Resistencia NW, has  
 17 tweeted over 2700 times on Twitter criticizing GEO and U.S. Immigration and Customs  
 18 Enforcement ("ICE") and making various allegations regarding the conditions at Northwest  
 19 Detention Center. Indeed, La Resistencia NW describes itself as "Organizing against detentions  
 20 and deportations in WA state alongside people detained in NW Ice Processing Center –  
 21 ShutItDown!" A copy of the first page of La Resistencia NW's twitter feed is attached as Exhibit  
 22 D.<sup>1</sup>

23       On January 24, 2021, The Seattle Times, published an Opinion piece, "Stop cruel  
 24 immigration detention: Close the Northwest Processing Center," a copy of which is attached as  
 25 Exhibit E. The article provided that the NWIPC, run by ICE and GEO, had been reported to have

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26       <sup>1</sup> The remainder of La Resistencia NW's Twitter feed can be found at  
 27 <https://twitter.com/ResistenciaNW>.

1 “cruel solitary confinement practices and hunger strikes,” also caused detainees to “suffer a  
 2 range of grave problems: inadequate medical care, poor nutrition, [and] unsanitary living  
 3 conditions. Labor rights? For the privilege of cleaning the facility, among other tasks, detainees  
 4 are paid \$1 per day.” Exhibit D. The article further criticized the COVID-19 conditions at  
 5 NWIPC attributing “deliberate indifference,” to ICE and “profit-seeking corporations,” and  
 6 opining that NWIPC detainees “continue to be exposed to senseless hazards and suffering.”  
 7 Exhibit E.

8 On June 2, 2021, KUOW news, published an article, “Washington state and detainees  
 9 challenge \$1-a-day pay policy,” and reported on the arguments being made at the trial, which  
 10 had begun that very day. A copy of this article is attached as Exhibit F.

11 On June 7, 2021, the Washington State Attorney General again tweeted about the trial  
 12 stating, “Our office filed a motion to set a new trial date in our lawsuit against private prison  
 13 operator GEO Group for unjustly enriching itself by violating Washington’s minimum wage law  
 14 at the ICE facility in Tacoma.” A copy of the this Tweet with the commentary tweets are  
 15 attached as Exhibit G. Mr. Ferguson also linked a copy of a motion he had filed, provided an  
 16 update as to new trial date set for October 12, 2021, stated, “The judge wrote this case was the  
 17 ‘highest priority for resetting,’ and provided a link to this Court’s order. *See* Exhibit G. Mr.  
 18 Ferguson’s extrajudicial statements, meant to materially prejudice this case, and specifically this  
 19 jury pool, were successful accomplishing just that. Public commentary responding to the tweets  
 20 included: (i) Redefine Tacoma who said “GEO Group . . . is infecting lots of people with COVID  
 21 right now. GEO/ICE are dangerous to those inside and those outside;” (ii) Lynda@lyndastrait  
 22 said, “Profit from imprisoning people is immoral. Pretty basic knowledge;” and (iii) So it  
 23 goes@melaniesdavis said, “Close them up. As in ICE and anything involved with it.” Exhibit F.  
 24 Clearly, GEO’s right to a fair trial have been severely impeded by these public comments.

25 On June 22, 2021, while the jury was deliberating during the first trial in this matter, the  
 26 South Seattle Emerald, published a news article entitled, “Community Group Demands Govenor  
 27 [sic] Inslee End Cooperation with ICE,” a copy of which is attached as Exhibit H. According to

1 the article, the Liberation Not Deportation Coalition sent Governor Inslee a demand letter and  
 2 held a press conference seeking an end to contracts between the Washington State Department of  
 3 Corrections and ICE regarding the transfer of state prisoners to the NWIPC.. Notably, the article  
 4 cited to recent legislation “HB 1090, which bans private, for-profit prison companies from  
 5 operating in the state, setting into motion the eventual closure of the Northwest ICE Processing  
 6 Center (NWIPC), formerly known as the Northwest Detention Center . . . [which] is run by the  
 7 Geo [sic] Group on behalf of ICE and is the largest immigration detention facility in Washington  
 8 State . . . It can be dangerous in federal custody, which is why organizers want the transfers to  
 9 end. State Attorney General Bob Ferguson took the GEO Group to federal court in 2017  
 10 demanding it pay working detainees the state’s then minimum wage of \$12 instead of \$1 a day.”

11 Exhibit H.

12 On July 13, 2021, My Northwest, published an article titled “New court date set for  
 13 state’s lawsuit against Tacoma ICE detention facility,” a copy of which is attached as Exhibit I,  
 14 reported the allegations made in this case and the hung jury result. The article went on to report  
 15 about inmate hunger strikes and accusations of improper medical care and use of solitary  
 16 confinement at the Northwest Detention Center. It further noted that “[e]arlier in 2021, state  
 17 lawmakers passed a measure formally banning private prisons, specifically targeting the Tacoma  
 18 facility for closure.” Exhibit I.

19 On August 16 and 17, 2021, both Reuters Legal and Law 360 published articles entitled,  
 20 “GEO Group can’t shake claims over \$1-a-day detainee pay,” discussing the mistrial declared in  
 21 this case. A copy of both articles is attached as Composite Exhibit J. The Reuters article noted  
 22 that the Washington Attorney General had filed a separate lawsuit against GEO, “also claiming it  
 23 is required to pay detainees the state minimum wage of \$11 per hour. Washington’s minimum  
 24 wage law does not apply to state jails, but the attorney general claims in the lawsuit that GEO is  
 25 not exempt because it is a private company holding people on civil, not criminal charges.”  
 26 Exhibit J. On August 18, 2021, Reuters Legal also tweeted about this lawsuit and the claims  
 27 made herein. A copy of the tweet is attached as Exhibit K.

1       On August 20, 2021, Bloomberg Law, published an article entitled, “Private Prison Lacks  
 2 Immunity in ICE Detainee \$1-a-Day Wage Suit,” a copy of which is attached as Exhibit L. This  
 3 article specifically discussed GEO’s arguments made in this case concerning governmental  
 4 immunity and the Court’s ruling denying same. The same was discussed in a Law 360 article,  
 5 “GEO Group Not Immune From Wash. \$1-A-Day Wage Suit,” a copy of which is attached as  
 6 Exhibit M, which detailed the allegations made in the instant suit, the Washington Attorney  
 7 General’s office’s arguments in favor of the plaintiffs, and that a mistrial was ordered when  
 8 jurors were unable to reach a conclusion at the first trial. Indeed, Washington Attorney General  
 9 Bob Ferguson is noted as applauding the Court’s immunity ruling in yet another extrajudicial  
 10 statement: “This is an important step toward holding this multi-billion dollar company  
 11 accountable for exploiting its detainee workers in Washington by not following our minimum  
 12 wage laws.” Exhibit M.

13       Most importantly, within a mile of the courthouse itself, there is a mural about the  
 14 Northwest Detention Center that alleges the Center is “killing” the detainees and causing them to  
 15 get “sick everyday because of the food.” A picture of the mural is attached as Exhibit N.

16       Recent negative national news coverage of GEO and other privately-run detainee  
 17 facilities, as well as the Biden Administration’s handling of migrants in general, may also lead to  
 18 juror bias. For example on August 16, 2021, the Washington Examiner, published, “Biden  
 19 recreating worst conditions for thousands of migrant children separated at border,” a copy of  
 20 which is attached as Exhibit O, and reported that the Biden administration has separated more  
 21 immigrant families than Trump, and is “holding children in conditions that are worse than any  
 22 seen under Trump.” The negative sources of information, as cited above, have influenced and  
 23 caused potential jurors to have negative preconceived opinions against GEO or the Northwest  
 24 Detention Center. These social media posts, articles and the mural itself are dramatic evidence of  
 25 the need to modify the juror questionnaire to include questions that can elicit whether jurors hold  
 26 such opinions or biases against the Northwest Detention Center or have followed the Washington  
 27 Attorney Generals’ Office on social media. Because of the serious and unprofessional conduct by

1 the Washington Attorney General in creating negative press and materially prejudicing GEO in  
 2 this case, GEO reiterates its request that the modified jury questionnaire be sent to the potential  
 3 jurors along with the juror summons.

4 GEO requests the following additional questions as provided for in the modified Juror  
 5 Questionnaire: (1) Do you have views about the Northwest Detention Center in Tacoma? [ ] Yes  
 6 [ ] No Please explain: \_\_\_\_\_; (2) Have you read, listened to, viewed or  
 7 otherwise reviewed any stories, articles, or opinion pieces about detainees at the Northwest  
 8 Detention Center participating in a work program?; and (3) Do you follow the Washington  
 9 Attorney Generals' office on social media (e.g. Twitter or Facebook)? *See* Exhibit A.

10 **II. ARGUMENT**

11 The Court has wide discretion in determining the jury *voir dire* examination and  
 12 questionnaires to be utilized in that process. *See Darbin v. Nourse*, 664 F.2d 1109, 1114 (9<sup>th</sup> Cir.  
 13 1981). “The principal purpose of voir dire is to probe each prospective juror’s state of mind to  
 14 enable the trial judge to determine actual bias and to allow counsel to assess suspected bias or  
 15 prejudice.” *Id.* at 1113. In keeping with this purpose, the Juror Questionnaire can and should be  
 16 designed to aid the parties uncover key information concerning potential juror qualifications,  
 17 perceptions, assumptions, and biases.

18 The proposed additional questions serve to elicit information regarding the attitudes,  
 19 assumptions, views, and impartiality that prospective jurors may hold against GEO or the  
 20 Northwest Detention Center in line with the process for selecting jurors pursuant to Rule 47 of  
 21 the Fed.R.Civ.P. With the addition of the three additional questions, the modified Juror  
 22 Questionnaire will allow the parties to uncover any biases, or engage in further follow-up inquiry  
 23 during *voir dire*, thereby, facilitating the parties in the appropriate exercise of cause and  
 24 peremptory challenges pursuant to 28 U.S.C. § 1866.

25 In this case, the modified questionnaire is appropriate because of the possible origins of  
 26 bias and/or prejudice regarding the issues in this case, GEO, and the Northwest Detention  
 27 Center. Many potential jurors may have read any of the numerous news and other information

1 sources cited above discussing the allegations, evidence, and arguments presented in the original  
 2 trial, comments made by the Washington Attorney General about GEO and the issues in this suit,  
 3 alleged conditions at and State's efforts to shut down the Northwest Detention Center, or may  
 4 have seen the mural on the way to the courthouse.

5 In addition, it is possible that many prospective jurors may have developed biases or  
 6 strong personal opinions concerning the issues to be tried in this case based upon the extensive  
 7 local, regional, and national media coverage of GEO-operated facilities, the treatment of  
 8 migrants by ICE and ICE-contractors, public sentiment regarding privately-operated prisons and  
 9 detainee facilities, and legislation in other states banning contracts with ICE and/or private  
 10 corporations for housing detainees. Accordingly, a substantial portion of the venire may be  
 11 personal opinions about this litigation before jury selection even begins. *See Darbin*, 664 F.2d at  
 12 1113 (“If an inquiry requested by counsel is directed toward an important aspect of the litigation  
 13 about which members of the public may be expected to have strong feelings or prejudices, the  
 14 court should adequately inquire into the subject on voir dire. The court must not niggardly or  
 15 grudging in accepting counsel’s requests that such inquiries be made.”).

16 Gathering information about these experiences and opinions can be accomplished more  
 17 concisely and expeditiously by using the modified questionnaire than waiting until standard *voir*  
 18 *dire* to initiate the additional proposed questions. Moreover, including the three additional  
 19 questions in the written questionnaire to obtain this information will provide more easily  
 20 comparable data by eliciting candid answers from many individuals in response to the exact  
 21 same questions in the same setting. Finally, having detailed responses about any personal  
 22 experiences or media coverage to which potential jurors may have been exposed in advance will  
 23 allow the Court and the parties to conduct a more focused, more efficient, and more thorough  
 24 *voir dire* concerning whether these experiences will prevent the prospective jurors from being  
 25 fair and impartial.

### III. CONCLUSION

For the foregoing reasons, GEO respectfully requests that this Court grant this Motion and utilize the modified juror questionnaire set forth as Exhibit A and that the modified juror questionnaire be sent to the potential jurors along with the juror summons.

Respectfully submitted this 23<sup>rd</sup> day of September 2021.

AKERMAN LLP

By: s/ Adrienne Scheffey  
Adrienne Scheffey (Admitted *pro hac vice*)  
1900 Sixteenth Street, Suite 950  
Denver, Colorado 80202  
Telephone: (303) 260-7712  
Facsimile: (303) 260-7714  
Email: [adrienne.scheffey@akerman.com](mailto:adrienne.scheffey@akerman.com)

By: s/ Rubén Castillo  
Rubén Castillo (*Pro Hac Vice Pending*)  
71 South Wacker Drive, 47th Floor  
Chicago, Illinois 60606  
Telephone: (312) 634-5700  
Facsimile: (312) 424-1900  
Email: ruben.castillo@akerman.com

By: s/ Jacqueline M. Arango  
Jacqueline M. Arango (*Pro Hac Vice* Pending)  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131  
Telephone: (305) 374-5600  
Facsimile: (305) 374-5095  
Email: jacqueline.arango@akerman.com

FOX ROTHSCHILD LLP

By: s/ Al Roundtree  
Al Roundtree, #54851  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154  
Telephone: (206) 624-3600  
Facsimile: (206) 389-1708  
Email: [aroundtree@foxrothschild.com](mailto:aroundtree@foxrothschild.com)

*Attorneys for Defendant The GEO Group, Inc.*

## **PROOF OF SERVICE**

I hereby certify on the 23rd day of September, 2021, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DEFENDANT THE GEO GROUP, INC.'S MOTION REQUESTING MODIFIED JUROR QUESTIONNAIRE** via the Court's CM/ECF system on the following:

## OFFICE OF THE ATTORNEY GENERAL

Marsha J. Chien  
Andrea Brenneke  
Lane Polozola  
Patricia A. Marquez  
800 Fifth Avenue, Suite 2000  
Seattle, Washington 98104

*Attorneys for Plaintiff State of Washington*

SCHROETER GOLDMARK & BENDER

BERGER GOLDMARK & B  
Adam J. Berger, WSBA #20714  
Lindsay L. Halm, WSBA #37141  
Jamal N. Whitehead, WSBA #39818  
Rebecca J. Roe, WSBA #7560  
401 Union Street, Suite 3400  
Seattle, Washington 98101  
Telephone: (206) 622-8000  
Facsimile: (206) 682-2305  
Email: [hberger@sgb-law.com](mailto:hberger@sgb-law.com)  
Email: [halm@sgb-law.com](mailto:halm@sgb-law.com)  
Email: [whitehead@sgb-law.com](mailto:whitehead@sgb-law.com)  
Email: [roe@sgb-law.com](mailto:roe@sgb-law.com)

## THE LAW OFFICE OF R. ANDREW FREE

Andrew Free (Admitted *Pro Hac Vice*)  
P.O. Box 90568  
Nashville, Tennessee 37209  
Telephone: (844) 321-3221  
Facsimile: (615) 829-8959  
Email: andrew@immigrantcivilrights.com

OPEN SKY LAW PLLC

Devin T. Theriot-Orr, WSBA #33995  
20415 72nd Avenue S, Suite 100  
Kent, Washington 98032  
Telephone: (206) 962-5052  
Facsimile: (206) 681-9663  
Email: [devin@openskylaw.com](mailto:devin@openskylaw.com)

1 **MENTER IMMIGRATION LAW, PLLC**  
2 Meena Menter, WSBA #31870  
3 8201 164th Avenue NE, Suite 200  
4 Redmond, Washington 98052  
5 Telephone: (206) 419-7332  
6 Email: meena@meenamenter.com

7 *Attorneys for Plaintiffs Ugochukwu Nwauzor, et al.*

8 *s/ Nick Mangels* \_\_\_\_\_

9 Nick Mangels

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PROOF OF SERVICE  
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**AKERMAN LLP**

1900 Sixteenth Street, Suite 950  
Denver, Colorado 80202  
Telephone: 303-260-7712